



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVES SUZANNE JESKEWITZ AND JEFFREY PLAILE
FROM: Anne Sappenfield, Senior Staff Attorney
RE: LRB-0112/1, Relating to Declarations of Paternal Interest
DATE: October 9, 2002

This memorandum describes LRB-0112/1, a bill draft relating to declarations of paternal interest and participation in termination of parental rights (TPR) proceedings based upon the filing or failure to file such a declaration.

DECLARATIONS OF PATERNAL INTEREST IN MATTERS INVOLVING CHILDREN

Current Law

Under current law, any person claiming to be the father of a nonmarital child who is not adopted and whose parents have not married ("nonmarital child") may file a declaration of his interest in matters affecting the child with the Department of Health and Family Services (DHFS). The declaration may be filed at any time before the termination of the father's parental rights.

The declaration must be in writing, must be signed by the person declaring the paternal interest, and must contain all of the following: (1) the person's name and address; (2) the name and last-known address of the mother; (3) the month and the year of the birth or expected birth of the child; and (4) a statement that he has reason to believe that he may be the father of the child.

A copy of a declaration filed with DHFS must be sent to the mother at her last-known address. The fact that the mother may not receive a copy of the declaration does not affect its validity. The mother may send a written response regarding the declaration to DHFS, and DHFS must file the response with the declaration. If the mother does not send a response, her lack of response does not constitute an admission of the statements contained in the declaration.

Current law specifies that filing a declaration of paternal interest does not extend parental rights to the person filing the declaration. [s. 48.025, Stats.]

DHFS is required to maintain a file containing records of declarations of paternal interest. DHFS may not release these records except under a court order or to the Department of Workforce Development (DWD) or a county child support agency upon request by DWD or the child support agency for purposes of establishing paternity or enforcing child support or upon request by any other person with a direct and tangible interest in the record. [s. 46.03 (7) (bm), Stats.]

The Bill Draft

Under the bill draft, a declaration of paternal interest may be filed at any time before the birth of the child or within 14 days after the birth of the child. The declaration must be signed and verified upon oath or affirmation. If the person filing the declaration is under 18 years of age, the declaration must also be signed by a parent or guardian of the person.

The bill draft provides that a person who files a declaration may revoke it at any time by filing a statement with DHFS that the person, to the best of his knowledge and belief, is not the father of the child or that another person has been adjudicated as the father of the child. The statement must be signed by the person and verified upon oath or affirmation. If the person filing the revocation is under 18 years of age, the revocation must also be signed by a parent or guardian of the person.

The bill draft provides that DHFS generally must keep declarations and revocations of declarations confidential and may not open them to public inspection or disclose their contents. There are several exceptions to the confidentiality requirement. As under current law, a copy of a declaration filed with DHFS must be sent to the mother. Also, a court in a proceeding under the Children's Code, a paternity proceeding, or a juvenile in need of protection or services proceeding, or a person authorized to file a petition or bring an action or motion in such a proceeding or to commence such a proceeding may request that DHFS search its files to determine whether a person who may be the father of the child who is the subject of the proceeding has filed a declaration. This also applies to courts and persons in other states who are acting or authorized to act under substantially similar laws of that state. If DHFS has on file a declaration regarding the child, DHFS must issue a certified copy to the requester. If DHFS does not have an applicable declaration on file, DHFS must issue a certified statement that no declaration could be found. A person who obtains information under this provision may not use or disclose the information for any other purpose. Finally, a declaration or revocation may be disclosed by order of the juvenile court for good cause shown.

The bill draft requires DHFS to publicize all of the following information in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child:

- a. That a person claiming to be the father of a nonmarital child may file a declaration of paternal interest.
- b. The procedures for filing a declaration.
- c. The consequences of filing a declaration.
- d. The consequences of not filing a declaration.

Under the bill draft, a person who makes a false statement in a declaration, revocation, or response to a filed declaration (i.e., the mother) that the person does not believe is true may be subject to

prosecution for false swearing. The penalty for false swearing is a fine of \$10,000 and imprisonment for not more than nine months. In addition, any person who intentionally obtains, uses, or discloses information from a declaration that is confidential may be fined \$1,000 and imprisoned for not more than 90 days.

TPR PROCEEDINGS

Contents of Petition

Current Law

Under current law, a petition to initiate a TPR proceeding must set forth all of the following with specificity:

- a. The name, birth date, and address of the child.
- b. The names and addresses of the child's parent or parents, guardian, and legal custodian.
- c. A statement that consent will be given to the TPR or a statement of the grounds for involuntary TPR and of the facts and circumstances that the petitioner alleges establish these grounds.
- d. A statement of whether the child may be subject to the federal Indian Child Welfare Act.

[s. 48.42 (1), Stats.]

The Bill Draft

Under the bill draft, a TPR petition concerning a nonmarital child must contain a statement that DHFS has searched its files to determine whether a person who may be the father of the child has filed a declaration of paternal interest. The petitioner must also attach to the petition either a certified copy of the declaration or a certified statement of DHFS, dated no earlier than 15 days after the date of birth of the child, that no declaration could be located.

Notice and Summons

Current Law

Under current law, if a TPR proceeding relates to a child who is a nonmarital child, the person or agency filing the TPR petition must cause the summons and petition to be served upon the following:

- a. A person who has filed a declaration of a paternal interest.
- b. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice.

c. A person who has lived in a familial relationship with the child and who may be the father of the child.

[s. 48.42 (2) (b), Stats.]

Current law also provides that certain persons are not entitled to notice of a TPR proceeding. Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that a sexual assault has occurred or if the person who may be the father has been convicted of sexual assault for conduct which may have led to the child's conception. Current law specifies that a person who is not given notice under this provision does not have standing to appear and contest a petition for the termination of his parental rights. This provision does not apply, however, to a person who may be the father of a child conceived as a result of sexual assault of a child (i.e., a child under age 16 years) if that person was less than 18 years of age at the time of the sexual assault. [s. 48.42 (2m), Stats.]

The Bill Draft

The bill draft requires the summons and petition to be served upon the following:

a. A person who has filed an unrevoked declaration of a paternal interest before the birth of the child or within 14 days after the birth of the child.

b. A person or persons alleged to the court to be the father of the child or who may, based upon a statement of the mother, signed and verified under oath or affirmation, or other information presented to the court, be the father of the child unless that person has waived the right to notice.

c. A person who, at the time the TPR petition is filed, is openly living with the child or the child's mother and is holding himself out to be the father of the child.

d. In the case of a child who is less than six months old on the date on which the TPR petition is filed, a person who, during the first 30 days after the birth of the child, had a substantial parental* relationship with the child.

e. In the case of a child who is six months old or older on the date on which the TPR petition is filed, a person who, for a period of six months within the one-year period immediately preceding the date on which the petition was filed, had a substantial parental relationship with the child.

f. In the case of a child who has been the subject of a CHIPS or an unborn child in need of protection and services proceeding, a person who had submitted to the jurisdiction of the court and participated in the proceeding.

*"Substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors including whether the person has ever expressed concern for or interest in the support, care, or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. [s. 48.415 (6) (b), Stats.]

The bill draft also provides that notice need not be given to a person who may be the father of a nonmarital child unless he meets one of the conditions described above and is, therefore, entitled to notice.

Right to Participate in TPR Proceeding

Current Law

Current law specifies that a person who is not entitled to notice because the child was conceived as a result of sexual assault does not have standing to appear and contest a petition for the termination of his parental rights.

The Bill Draft

Under the bill draft, a person who is not given notice does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition (i.e., whether parental rights will be terminated), or make alternative dispositional recommendations.

The bill draft also provides that, in the case of a nonmarital child, a person who may be the father of the child and to whom notice must be given may participate in the TPR proceeding as follows:

a. The person may contest the petition, present evidence relevant to the issue of disposition, and make alternative dispositional recommendations if any of the following apply:

- (1) The person has filed a timely and unrevoked declaration of paternal interest and, within 30 days after filing the declaration, appeared to the court and claimed that he is the father of the child, commenced an action to determine paternity of the child, or filed a statement acknowledging paternity.
- (2) The person had a substantial parental relationship with the child or submitted to the jurisdiction of the court in a CHIPS proceeding, as described above.

b. The person may not contest the petition, but may present evidence relevant to the issue of disposition and make alternative dispositional recommendations, if the person filed a declaration of paternal interest, is alleged to the court to be the father based upon the mother's statements or other evidence, or is openly living with the child or the child's mother and holding himself out to be the father of the child.

Appeals

Current Law

Under current law, a parent who has consented to a TPR or a parent who did not contest a petition for an involuntary TPR and whose rights were terminated may file a motion with the court for relief from judgment. The motion must be based on specified grounds such as mistake, newly

discovered evidence, or fraud. Such a motion must generally be filed within 30 days after the entry of the TPR judgment.

Current law does not address the appeal rights of a person who was not a party in the TPR proceeding.

The Bill Draft

The bill draft provides that in no event may a person, for any reason, collaterally attack a TPR judgment more than one year after the date on which the judgment was entered.

ADOPTION PROCEEDINGS

Current Law

Under current law, a parent who has custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the adoptive parent or parents' home if the home is licensed as a foster home. The petition for placement must be filed with a TPR petition for voluntary consent for the termination of any existing rights of the petitioning parent or parents.

Before holding a hearing on the placement and TPR petitions, the court must ascertain whether the child's paternity has been acknowledged or adjudicated (hereinafter, "established"). If any person has filed a declaration of paternal interest, the court must determine the rights of that person. If the child's paternity has not been established and if no person has filed a declaration, the court must attempt to ascertain the paternity of the child. The court may not proceed with the hearing on a placement or TPR petition unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

At the final adoption hearing, the court must establish whether the rights of any persons who have filed declarations of paternal interest have been determined or whether the child's paternity has been established. If the court finds that no such determination has been made, the court must proceed to attempt to ascertain the paternity of the child and the rights of any person who has filed a declaration before it may take any action on the petition for adoption.

The Bill Draft

Under the bill draft, before holding a hearing on placement and TPR petitions filed by the child's parent and the proposed adoptive parent or parents, the court must ascertain whether the paternity of a nonmarital child has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. These rights are the rights that are set forth regarding alleged fathers' participation in TPR proceedings, as described above. As under current law, the court may not proceed with the hearing on the petitions unless the parental rights of the nonpetitioning parent have been terminated.

At the final adoption hearing, the court must determine whether a nonmarital child's paternity has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. The bill draft specifies that the court may not proceed with the hearing on the petition for adoption unless the parental rights of the nonpetitioning parent have been terminated.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

AS:wu;tl

Birth Parent Registry

Meeting III
October 10, 2002

- ~~I.~~ Recap of last meeting
- ~~II.~~ Changes in the draft from the last meeting
Anne Sappenfield
- ~~III.~~ Notice to Putative Fathers Memo
Gordon Malaise
- ~~IV.~~ Unresolved Concerns/Lingering Questions
Anne Sappenfield
- ~~V.~~ Federal Legislation
Theresa Roetter
- ~~VI.~~ Where does the legislation stand? Does the committee support it?
- ~~VII.~~ What happens next?
Legislative process
- ~~VIII.~~ Other
- ~~IX.~~ THANK YOU, THANK YOU, THANK YOU!!!!



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVES SUZANNE JESKEWITZ AND JEFFREY PLALE
FROM: Anne Sappenfield, Senior Staff Attorney
RE: Differences Between Declaration of Paternal Interest Bill Drafts
DATE: October 9, 2002

This memorandum describes the differences between LRB-1827/3, a bill draft relating to declarations of paternal interest and participation in termination of parental rights (TPR) proceedings based on the filing or failure to file such a declaration, and LRB-0112/1, a redraft of LRB-1827/3. The memorandum refers to LRB-1827/3 as "the old draft" and LRB-0112/1 as "the new draft."

DECLARATIONS OF PATERNAL INTEREST

Timeline for Filing

Under the bill drafts, a declaration of paternal interest may be filed at any time before the birth of the child or within 14 days after the birth of the child. The old draft provided that if a person failed to file the declaration within the required time period and if that failure to file was through no fault of the person filing the declaration, he could file the declaration within 10 days after it became possible to do so. The new draft does not contain an exception to the requirement that the declaration be filed within 14 days after the birth of the child.

Filing Under Oath or Affirmation

The bill drafts require that a declaration of paternal interest must be in writing and signed by the person declaring the paternal interest. The new draft requires that declarations of paternal interest must also be verified under oath or affirmation. As a consequence, any person who makes a false statement that he does not believe is true on a declaration of paternal interest may be prosecuted for false swearing under s. 946.32 (2), Stats. The penalty for false swearing is a fine not to exceed \$10,000 and imprisonment not to exceed nine months.

Declarations Filed by a Minor

The new draft requires that a declaration of paternal interest that is filed by a minor must be signed by a parent or guardian of the minor.

Revocation of Declarations

The old draft did not provide for revocation of declarations of paternal interest. Under the new draft, a person who has filed a declaration may revoke it at any time by filing with the Department of Health and Family Services (DHFS) a statement, signed and verified under oath or affirmation, that the person, to the best of his knowledge and belief, is not the father of the child or that another person has been adjudicated as the child father. If the person filing the revocation is under 18 years of age, the revocation must also be signed by a parent or guardian of the minor.

Publicizing the Availability of Declarations of Paternal Interest

The new draft requires DHFS to publicize all of the following in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child:

- a. That the person claiming to be the father of a nonmarital child may file a declaration of paternal interest.
- b. The procedures for filing a declaration.
- c. The consequences of filing a declaration.
- d. The consequences of not filing a declaration.

Confidentiality of Declarations

The old draft maintained a provision of current law under which DHFS may not disclose records of declarations of paternal interest except under a court order and as follows:

- a. To the Department of Workforce Development (DWD) or a county child support agency upon request by DWD or the child support agency for purposes of establishing paternity or enforcing child support.
- b. Upon request by any other person with a direct and tangible interest in the record.

The old draft also created a new provision that stated that declarations are confidential and may not be open to public inspection and that their contents may not be disclosed except to an interested party in a proceeding involving the child who is the subject of the declaration or the mother listed on the declaration, or by court order. The old draft also provided that a declaration could not be used against the person filing it in any criminal prosecution.

The new draft amends current law so that declarations of paternal interest may not be disclosed to DWD or a child support agency for purposes of enforcing child support. The new draft requires DHFS to keep the contents of any declaration, revocation of a declaration, or response to a declaration

confidential. DHFS may not open for public inspection or disclose the contents of a declaration, revocation, or response except by order of the court for good cause shown and as follows:

- a. As required under current law, DHFS must send a copy of any declaration filed to the mother.
- b. A court in a proceeding under the Children's Code, a paternity proceeding, or a juvenile in need of protection or services proceeding or a person authorized to file a petition or bring an action or motion in such a proceeding or to commence such a proceeding may request that DHFS search its files to determine whether a person who may be the father of the child who is the subject of the proceeding has filed a declaration. This also applies to courts and persons in other states who are acting or authorized to act under substantially similar laws of that state.

The new draft does not address using a declaration against the person filing it in a criminal prosecution.

TPR PROCEEDINGS

Grounds for Involuntary TPR

The old draft provided that, for purposes of an involuntary TPR proceeding, the ground of abandonment could be met by showing that a father did not file a declaration of paternal interest, unless the father showed that he had a substantial parental relationship with the child.

The new draft does not contain this provision.

Contents of Petition

The new draft provides that a TPR petition concerning a nonmarital child must contain a statement that DHFS has searched its files to determine whether a person who may be the father of the child has filed a declaration of paternal interest. The petitioner must attach to the petition either a certified copy of the declaration or a certified statement of DHFS, dated no earlier than 15 days after the date of the birth of the child, that no declaration could be located.

Notice and Summons

Under current law and the old draft, if a TPR proceeding relates to a child who is a nonmarital child, the person or agency filing the TPR petition must cause the summons and petition to be served upon a person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice.

The new draft requires that the mother's statement relating to who may be the father of the child must be verified under oath or affirmation.

Appeal

The new draft provides that in no event may a person, for any reason, collaterally attack a TPR judgment more than one year after the date on which the judgment was entered.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

AS:rv;ksm



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October 6, 2002

MEMORANDUM

To: Representatives Jeskewitz and Plale
From: Gordon M. Malaise, Senior Legislative Attorney
Subject: Notice to Putative Fathers

Introduction and Summary

You have asked me to research the laws of other states that have putative father registries to see what categories of putative fathers are provided with notice of termination of parental rights (TPR) and adoption proceedings.

Generally, the registry states follow a similar format under which all of the following categories of putative fathers receive notice of those proceedings:

1. Putative fathers who have timely filed with the state's registry.
2. Putative fathers who have established a substantial parental relationship with the child.
3. Putative fathers who at the time of the petition or the time the child is removed from the home are living with the child or the child's mother and who are holding themselves out to be the father of the child.
4. Putative fathers who have been identified by the child's mother or are otherwise known to the petitioner.

The draft includes all of these categories, but that is not the end of the inquiry because within each category the laws of the other states vary in their details. Those variations raise the following issues that the committee might wish to consider:

1. Consequences of registration. Currently, the draft permits a putative father who files a declaration of paternal interest to present evidence at the dispositional hearing relating to the best interests of the child, but does not permit such a putative father to contest the petition at the fact-finding hearing unless he also initiates a paternity action within 30 days after filing the declaration. Although this approach passes constitutional muster in that a similar scheme under New York law was upheld in *Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985 (1983), the Practice Commentaries following sections 372-c and 384-c of the New York Social Services Law in

McKinney's Consolidated New York Statutes (the registry and notice laws of New York) indicate that in actual practice New York courts and adoption attorneys go further and permit all putative fathers who are entitled to notice to contest the petition at the fact-finding hearing. Moreover, Chief Justice Abrahamson, in her dissenting opinion in *In Interest of SueAnn AM*, 176 Wis, 2d 673, 691 (1993), has pointed out that a putative father who might have established a substantial parental relationship with his child, but who is not permitted to present evidence to prove it, is caught in an unfair Catch-22 situation.

Accordingly, the committee might wish to consider permitting all putative fathers who are entitled to notice of the TPR proceeding to participate in all stages of the proceeding.

2. Substantial parental relationship. Currently, the draft requires notice to be provided, in the case of a child who is six months of age or older when the petition is filed, to a person who, for a period of six months within the one-year preceding the filing of the petition, had a substantial parental relationship, as defined in WI law, with the child and, in the case of a child who is less than six months of age when the petition is filed, to a person who, during the first 30 days after the birth of the child, had a substantial parental relationship, as so defined, with the child.

This notice provision was based on IL law, but on closer inspection the provision does not faithfully track all of the nuances of IL law. Specifically, for a child who is six months of age or older, the six months within one year time frame under IL law only applies to a presumption that a person who has lived with the child and held himself out to be the father of the child during that time frame has established a substantial parental relationship with the child. Therefore, the draft should be conformed to IL law by limiting the application of the six months within one year time frame to the case of a man who has lived with the child and held himself out to be the child's father and by not specifying a time frame for otherwise establishing a substantial parental relationship.

Similarly, for a child who is under six months of age, IL law and, indeed, the current WI definition of "substantial parental relationship" do not preclude consideration of the man's actions during the pregnancy. The draft, however, only looks at the first 30 days after the child's birth. Therefore, the draft should be clarified to include consideration of the man's actions during the pregnancy. Moreover, the 30-day cut-off date for establishing a substantial parental relationship with a child who is under six months of age is inconsistent with the failure to assume parental responsibility TPR ground under current WI law, which does not specify a time frame for not assuming parental responsibility. Therefore, the 30-day cut-off date should be deleted from the draft, unless the committee decides to amend the TPR ground based on failure to assume parental responsibility to require a person to assume that responsibility within 30 days after the child's birth.

3. Living with child. Currently, the draft requires notice to be provided to a man who at the time the petition is filed is living with the child or the mother and holding himself out to be the father of the child. The committee might wish to consider also providing notice to a man who is living with the child at the time the child was removed from the home because in most cases by the time the petition is filed, the child has already been removed from the home. The committee might also want to consider returning to current Wisconsin law and requiring the man to have lived with the child, not the mother, because the relevant inquiry for constitutional purposes is the man's relationship with the child, not his relationship with the mother. See *Matter of Raquel Marie X.*, 559 NE 2d 418 (NY 1990).

4. Identified by mother or otherwise known. Currently, the draft requires notice to be provided to a man who is identified by the mother in a written statement that is verified under oath or

affirmation. As to this category of putative fathers, the committee might wish to consider any of the following alternatives:

A. If the committee feels that requiring the mother's statement to be in writing and verified would discourage mothers from identifying fathers, the committee could decide to go back to current law and not impose any formal requirements on the mother's statement.

B. If the committee is satisfied that requiring the mother's statement to be in writing and verified would encourage truthfulness and seriousness among mothers, the committee could let the current draft stand.

C. If the committee feels that the state's interest in identifying fathers outweighs the mother's right to privacy, the committee could require mothers to identify all possible putative fathers, except in cases of rape or incest or cases in which the mother fears for the safety of herself and her child.

This memorandum will explore in greater detail the variations in these categories among registry states and will distill from those variations issues that the committee might wish to consider incorporating into Wisconsin law.

Discussion

1. Consequences of registration. Although all of the registry states, not surprising, require notice to be provided to a putative father who has filed with the registry, the consequences of filing vary among the states. Generally, those consequences fall into three categories:

A. In AL, AR, IA, NM, TX, and WY filing alone is sufficient to entitle a putative father to full due process in a TPR or adoption proceeding, that is, the putative father has standing to appear and contest the petition at the fact-finding hearing and to present evidence as to the best interests of the child at the dispositional hearing.

B. In AZ, GA, ID, MO, MN, MT, NE, OR, and TN a putative father who has filed with the registry must do something more in order to have standing to participate in the TPR or adoption proceeding. The most common requirement is that the putative father must initiate a paternity action within 30 days after receiving notice of the TPR or adoption proceeding in order to participate in the proceeding (AZ, GA, MN, NE, and TN), although ID and OR require a putative father to initiate a paternity action first and then file with the registry, MO requires the paternity action to be initiated within 15 days after the birth of the child, and MT requires the father not merely to have initiated a paternity action, but to have established paternity in order to participate in the proceeding.

C. A third group of states, NY, UT, OH, and IL, have adopted a hybrid, or middle-ground, approach under which a person who files with the registry may present evidence as to the best interests of the child at the dispositional hearing, but is not permitted to contest the petition at the fact-finding hearing unless he also initiates a paternity action within 30 days after filing with the registry. This approach, which was upheld as constitutional in *Lehr, supra.*, is the approach that the draft takes.

Although this middle-ground approach passes constitutional muster, the Practice Commentaries following section 372-c of the New York Social Services Law direct the reader's attention to *Matter of "R" Children*, 418 NYS 2d 741 (1979), in which the "court went beyond the statutory requirements and held that the unwed father was entitled to appear at the fact-finding

hearing on the termination of his parental rights . . .”. As a result, regardless of the clear language of the statute, “attorneys representing authorized agencies when faced with an unwed father who meets any of the indicia of this Section (entitled to notice but only for the purpose of presenting evidence at the dispositional hearing), will join the unwed father as a necessary party and present evidence against him in the fact-finding hearing.” Practice Commentaries following section 384-c of the New York Social Services Law.

Similarly, Chief Justice Abrahamson, in her dissent in *SueAnn AM, supra.*, points out that a putative father who does not acquire constitutional protection until he establishes a substantial parental relationship is caught in a Catch-22 situation in that under *Lehr* he has no due process rights unless he has established a substantial parental relationship, but he is not allowed an opportunity to introduce evidence showing that he has established such a relationship.

Accordingly, given the fact that in New York courts and adoption attorneys go beyond the statute and permit to participate at the fact-finding hearing all putative fathers who are entitled to notice and given the Catch-22 situation described by Chief Justice Abrahamson in *SueAnn AM* in which a putative father is not given the opportunity to prove that he has established a substantial parental relationship, the committee might wish to revise the draft to permit to participate in all stages of the TPR proceeding all putative fathers who are entitled to notice of the proceeding.

2. Substantial parental relationship. *Lehr, supra.*, established that a putative father who has established a substantial parental relationship with his child is entitled to due process in a TPR or adoption proceeding, but left to the states the task of defining how much of a relationship constitutes a “substantial” parental relationship. The U.S. Supreme Court has also declined to address the issue of what a putative father must do in order to establish such a relationship with a newborn child when there has not yet been much of an opportunity to develop such a relationship. *Seeking the Wisdom of Solomon: Defining the Rights of Unwed Fathers in Newborn Adoptions*, 20 Seton Hall Legislative Journal 363, 389-390 (1996).

The most common approach adopted by the states for defining what constitutes a substantial parental relationship for purposes of receiving notice of a TPR or adoption proceeding has been to distinguish children six months of age or older from children under six months of age and to provide a different standard for what a putative father must do in each of those cases in order to establish such a relationship.

In ID, IL, MT, NM, NY, and UT, if the child is six months of age or older when the petition is filed, notice must be provided to a man who has provided fair and reasonable financial support, according to his means, and who has either visited the child at least monthly when able and not prevented from doing so or had regular communication with the child or the child’s caregiver when able and not prevented from doing so. ID, IL, NY, and UT also provide that a man who has lived with the child and held himself out to be the father of the child for six months within the one year immediately preceding the child’s adoptive placement is presumed to have established a substantial parental relationship with the child. In MT the man must have lived with the child continuously for six months prior to the child’s placement, and in NM the man must have lived with the child within 90 days preceding the placement, in order to be presumed to have established a substantial parental relationship.

For a child who is under six months of age when the petition is filed, ID, MT, and UT require notice to be provided to a man who, if he had actual knowledge of the pregnancy, paid a fair and

reasonable amount toward the expense of the pregnancy and birth, according to his means, when not prevented from doing so and who initiated a paternity action prior to the adoptive placement. MT, in addition, requires the man to have supported and visited the child since birth in order to receive notice. NY requires a man, during the six months preceding the placement, to have held himself out to be the father of the child, to have paid a reasonable amount toward the expense of the pregnancy and birth, and to have taken steps to legitimate the child in order to receive notice. *Matter of Raquel X.*, 559 N.E. 2d 418, 428 (1990). IL law is unusual in that it closes the putative father's window of opportunity for establishing a substantial parental relationship 30 days after the child's birth. In IL notice must be provided to a man who lived with the child and held himself out to be the father of the child during the first 30 days after the child's birth or who has paid reasonable expenses relating to the birth of the child and provided reasonable support for the child before 30 days after the child's birth.

Several other states do not distinguish between a child who is six months of age or older and a child who is under six months of age for purposes of providing notice to the putative father. In OR notice must be provided to a man who has lived with the child at any time during the 60 days preceding the petition or who has supported or tried to support the child during the year preceding the petition, in AL notice must be provided to a man who communicated with or supported the child for a six-month period, and in AR notice must be provided to a man who communicated with or supported the child for a one-year period. GA and MN do not provide minimum time frames for which a man must have supported or communicated with the child. Instead, GA requires notice to be provided to a man who has lived with the child, contributed to the support of the child, or attempted to legitimate the child and MN requires notice to be provided to a man who has "substantially supported" the child.

Finally, the remaining registry states, AZ, IN, IA, MO, NE, OH, TN, and TX are silent as to providing notice to a man who has established a substantial parental relationship with his child. In light of *Lehr*, however, Indiana's registry law was held unconstitutional as applied to a man who had failed to file with the registry, but who had paid support and visited the child. *Walker v. Campbell*, 711 N.E. 2d 42 (Ind. App. (1999)). Accordingly, notice must be provided to a man who has established a substantial parental relationship with his child, as defined by state law, notwithstanding his failure to file with the registry or establish legal paternity.

The WI draft is based on IL law insofar as it distinguishes between children six months or age or older and children under six months of age. The draft varies, however, from IL law insofar as the draft uses the WI definition of "substantial parental relationship" rather than the IL standard, which was a conscious decision, and insofar as the draft does not faithfully track all of the nuances of IL law, which appears to be inadvertent.

Looking more closely at the standard for providing notice when the child is six months of age or older, the draft requires notice to be provided to a person who, for a period of six months within the one-year period immediately preceding the date of the petition, had a substantial parental relationship with the child. Under IL law, however, the six months within the one-year period preceding the petition time frame applies only to a presumption that living with the child and holding out to be the child's father for that time period constitutes a substantial parental relationship. No time frame is specified for the remainder of IL's substantial parental relationship standard. Accordingly, in order to conform the draft to IL law, s. 48.42 (2) (b) 5., as created by the draft, should be clarified to require notice to a person who has had a substantial parental relationship with the child (without

specifying a time frame) and to state that a person who has openly lived with the child and held himself out to be the father of the child for a period of 6 months within the one-year period immediately preceding the date of the petition, is presumed to have had a substantial parental relationship with the child.

Looking more closely at the standard for providing notice when the child is under six months of age, the draft requires notice to be provided to a person who, *during the first 30 days* after the birth of the child had a substantial parental relationship with the child, which precludes consideration of the man's actions during the pregnancy. Under IL law, however, notice must be provided to a man who *before the expiration* of 30 days after the birth of the child paid reasonable birth expenses and support for the child, which includes consideration of the man's actions during the pregnancy. Moreover, precluding consideration of the man's actions during the pregnancy contradicts the WI definition of "substantial parental relationship" because the WI definition includes as a factor whether the man expressed concern for the mother during the pregnancy. See s. 48.415 (6) (b), stats. Accordingly, s. 48.42 (2) (b) 4., as created by the draft, should be clarified to require notice to a man who *prior to the expiration* of 30 days after the child's birth had a substantial parental relationship with the child.

Further, IL law is unusual insofar as it cuts off a man's opportunity to establish a substantial parental relationship with a child who is under six months of age 30 days after the birth of the child. No other state has a similar cut-off date. Apparently, IL's cut-off date stems from a TPR ground under IL law which permits a TPR if a parent fails to demonstrate a reasonable degree of interest, concern, or responsibility for the child during the first 30 days after its birth. 750 ILCS 50/1 (D) (1). WI's TPR ground based on failure to assume parental responsibility, however, has no similar 30-day cut-off date. Rather, WI's TPR ground simply requires a showing that the parent *never* assumed parental responsibility for the child, without specifying a time frame for not assuming that responsibility. As such, the 30-day cut off date does not fit into the context of WI law and, therefore, should be removed from the draft unless the committee decides to amend the TPR ground as well to insert the 30-day cut-off date.

3. Living with child or mother. About half of the registry states, ID, IL, MN, MT, NE, NY, TN, UT, and WY, require notice to be provided to a man who at the time the petition is filed is living with the child or the mother and holding himself out to be the father of the child or who at some point in the past lived with the child or mother and held himself out to be the father of the child. The other half of the registry states, AL, AZ, AR, GA, IA, MO, IN, NM, OH, and OR, are silent as to providing notice to a man who is living with the child or mother and holding himself out to be the father of the child. The issues that arise with respect to this category of putative fathers are *when* the man must have held himself out to be the father and *with whom* the man must have lived.

With respect to when the man must have held himself out to be the father, the majority of registry states requiring notice to be provided to such a man specify that the man must be living with the child or the mother at the time the petition is filed. TN and MT also require notice to be provided to a man who was living with the child when the child was removed from the home. NE requires notice to be provided to a man who has lived with the mother at any time in the 12 months prior to the child's birth. WY simply requires notice to be provided to a man who has ever lived with the mother. As a practical matter, it appears that requiring notice to be provided to a man who at the time of the petition is living with the child without also requiring notice to be provided to a man who at the time the child is removed from the home is not especially useful because in most cases the child is likely to have already been removed from the home prior to the filing of the petition.

With respect to with whom the man must have lived, ID, TN, UT, and current WI law require notice if the man is living with the child, IL and MN require notice if the man is living with the child *or* the mother, New York requires notice if the man is living with the child *and* the mother, and MT requires notice if the man is living with the mother. The New York Court of Appeals, however, held in *Raquel Marie X, supra.*, that requiring the man to have lived with the mother is unconstitutional because the relevant inquiry for constitutional purposes is not the man's relationship with the mother, but rather the man's relationship with the child.

Based on the foregoing, the committee might wish to consider making both of the following changes to the draft:

A. Requiring notice to be provided to a man who was living with the child at the time the child was removed from the home.

B. Restoring current WI law to specify that the man must have been living with the child, not the mother.

4. Identified by mother or otherwise known. The majority of the registry states, AL, AZ, GA, IL, IN, NE, NM, NY, TN, WY, and WI under current law, require notice to be provided to a man who is identified by the mother or is otherwise known to the petitioner or court. Some of those states, AL, GA, IN, NM, WY, and WI under current law, simply refer to a statement of the mother without further qualification. Other states, AZ, GA, IL, NE, NY, TN, and the current WI draft, specify that the mother's statement must be sworn to in writing. Other states, AZ, GA, and NE, go further and *require* the mother to execute a sworn statement naming all possible fathers unless the pregnancy was the result of rape or incest or the mother fears for the safety of herself or her child. Finally, AR, ID, IA, ~~MO~~^M, MT, OH, OR, and TX are silent as to notifying persons identified by the mother.

According to the Practice Commentaries following section 111-a of the New York Domestic Relations Law, requiring the mother's statement to be sworn to in writing has merit "(b)ecause oral or unsworn statements may be lightly made, may not be made truthfully, and may not be made with the intent that the statement be relied upon for a serious purpose." To go further, however, and *require* a mother to identify all possible putative fathers might violate her right to privacy. See Practice Commentaries following section 111 of the New York Domestic Relations Law.

Accordingly, it appears that the committee has struck the right balance in that requiring the mother's statement to be in writing and verified encourages truthfulness and seriousness among mothers. To go further and require a mother to name all possible putative fathers might result in identifying more fathers, but would infringe the mother's right to privacy. To go back to current law and remove the verification in writing requirement might encourage more mothers to identify fathers, but would not help in encouraging the truthfulness of those identifications.

Conclusion

I hope this information is helpful to you. If you have any questions about this memorandum, please do not hesitate to contact me at 266-9738 or at gordon.malaise@legis.state.wi.us.

Outstanding Issues—Declaration of Paternal Interest Bill Draft

☒

Yes

Should the bill draft state that sexual intercourse equals knowledge that a birth might result and that the father's rights might be terminated without notice?

The advantage to putting this statement in our statutes is that it makes clear that, in Wisconsin, a man who has sexual intercourse is legally on notice that a pregnancy and termination of his parental rights may result.

☐

Yes

Should a father be given rights to participate in a TPR proceeding if he resides in another state, the mother moved from that state and concealed her whereabouts from him, he attempted to locate the mother, and he complied with the requirements of his home state to protect his interests?

☒

Yes

Should DHFS be permitted to charge a reasonable fee for conducting searches of the declaration of paternal rights registry? Conversely, should they be prohibited from charging a fee? *that offsets operational cost of registry* ☒

☒

Yes

remove
do not permit
for paternity

In light of the fact that DWD and county child support agencies have been permitted to access declarations of paternal interest for purposes of enforcing child support for the last 15 years, is it appropriate to remove this authority in the bill draft?

☒

No

Should the bill draft require DHFS to distribute declaration of paternal interest forms to hospitals as is the current practice for acknowledgment of paternity forms?

Some have argued that declarations of paternal interest should be available at the hospital when a baby is born so that the father is aware of the option of filing a declaration. The argument against having both acknowledgment of paternity forms and declaration of paternal interest forms available at the hospital is that it may undermine the purpose of having hospital-based outreach for voluntary paternity establishment. Fathers who might otherwise acknowledge paternity may instead file only a declaration of paternal interest. The ultimate goal under both state and federal policy, however, is to establish paternity for children.



State of Wisconsin
2003 - 2004 LEGISLATURE

NOTE

LRB-0112/1

GMM:kmg:jf

(2)

RMR

2003 BILL

WANTED 12/11

Regenerate

1 AN ACT *to renumber* 48.025 (3); *to renumber and amend* 48.025 (2), 48.42 (2m)
2 and 48.423; *to amend* 46.03 (7) (bm), 48.025 (1), 48.27 (3) (b) 1. a., 48.27 (5),
3 48.42 (2) (b) 1., 48.42 (2) (b) 2., 48.42 (2) (b) 3., 48.422 (1), 48.422 (4), 48.43 (6),
4 48.837 (4) (e), 48.91 (2), 938.27 (3) (b) 1. a. and 938.27 (5); and *to create* 48.025
5 (2) (b), 48.025 (2) (d), 48.025 (3) (a), 48.025 (3) (c), 48.025 (3) (d), 48.025 (5),
6 48.025 (6), 48.42 (1) (e), 48.42 (2) (b) 4., 48.42 (2) (b) 5., 48.42 (2) (b) 6., 48.42 (2m)
7 (b) and 48.423 (2) of the statutes; **relating to:** declarations of paternal interest
8 by persons who may be the father of a nonmarital child, notice to those persons
9 of a termination of parental rights proceeding involving the child, ~~participation~~
10 ~~in those proceedings by those persons,~~ the finality of a termination of parental
11 rights order, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any person claiming to be the father of a nonmarital child whose paternity has not been established may file with the Department of Health and Family Services (DHFS) a declaration of paternal interest in matters affecting the child. The declaration may be filed at any time before a termination of the

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father's parental rights (TPR) and must be in writing and signed by the person filing the declaration. DHFS must send a copy of the declaration to the mother, who may file a written response to the declaration. Filing a declaration does not extend parental rights to the person filing the declaration, but it does entitle that person to notice of a child in need of protection or services (CHIPS), a juvenile in need of protection or services (JIPS), or a TPR proceeding. Current law requires DHFS to release a declaration of paternal interest to the Department of Workforce Development or a county child support agency upon request or to any other person with a direct and tangible interest in the declaration and permits DHFS to release a declaration to any other person only upon court order.

This bill makes various changes relating to declarations of paternal interest. The bill requires a declaration to be filed before the child's birth or within 14 days after the child's birth and permits a declaration to be revoked at any time. The bill also requires a declaration or revocation to be verified upon oath or affirmation and, in the case of a minor, to also be signed by the parent or guardian of the minor. The bill requires DHFS to keep declarations confidential, except that DHFS must, on the request of a court, in a CHIPS, JIPS, ~~or TPR proceeding or a paternity action~~ ^{or adoption} or of a person authorized to file a CHIPS, JIPS, ~~or TPR petition or a paternity action~~, search its files to determine whether a person who may be the father of the child who is the subject of the proceeding or action has filed a declaration. If DHFS has a declaration on file, it must issue to the requester a certified copy of the declaration. If DHFS does not have a declaration on file, it must issue to the requester a certified statement that no declaration could be located. A TPR petitioner then must ~~include in the petition a statement that DHFS has made such a search and attach to the petition~~ ^{be provided to} the certified copy of the declaration or the certified statement that no declaration could be located.

Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

This bill makes certain changes relating to notice to a person who may be the father of a nonmarital child whose paternity has not been established of a TPR proceeding concerning the child. Specifically, the bill requires notice to all of the following:

1. A person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child.

^{eliminates} the requirement that notice be provided to a person who is alleged to be the father of the child ^{or} who, based on statements made by the mother or other information, may be the father of the child and instead ~~requires~~

assigned to
exercise
jurisdiction
under the
Children's
Code and the
Juvenile
Justice Code
(juvenile
court)

File with
the juvenile
court,
prior to
the plea
hearing

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at the time ^{that} the petition is filed or at the time ^{that} the child ~~was~~ removed from the home

DRB-0112/1
GMM:kmg:jf

2. A person who is alleged to be the father of the child or who, based on a statement of the mother, signed and verified under oath or affirmation, or other information, may be the father of the child.

3. A person who, at the time the petition is filed, is openly living with the child or the child's mother and is holding himself out to be the father of the child.

4. In the case of a child who is less than six months of age when the petition is filed, a person who, during the first 30 days after the birth of the child, had a substantial parental relationship with the child. "Substantial parental relationship" is defined under current law to mean the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of a child.

5. In the case of a child who is six months of age or older when the petition is filed, a person who, for a period of six months within the one-year period immediately preceding the filing of the petition, had a substantial parental relationship with the child.

6. In the case of a child who has been the subject of a child or unborn child in need of protection or services proceeding, a person who has submitted to the jurisdiction of the court and participated in the proceeding.

The bill also divides persons who may be the father of a nonmarital child whose paternity has not been established into three categories for purposes of determining the extent to which those persons are permitted to participate in a TPR proceeding involving the child. In the first category is a person who timely filed a declaration of paternal interest and who, within 30 days after filing the declaration, either acknowledged paternity of the child or commenced an action to establish paternity of the child and a person described in item 4., 5., or 6. above. Those persons may contest the TPR petition, present evidence relevant to the disposition of the case, and make alternative dispositional recommendations.

In the second category is a person who timely filed a declaration of paternal interest, but who did not, within 30 days after filing the declaration, acknowledge paternity of the child or commence an action to establish paternity of the child, a person who is alleged to be the father of the child or who, based on a statement made by the mother, signed and verified under oath or affirmation, or other information, may be the father of the child, and a person who, at the time the petition is filed, is openly living with the child or the child's mother and is holding himself out to be the father of the child. Those persons may not contest the TPR petition, but may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

In the third category is a person who is not entitled to receive notice of the TPR proceeding under the bill. That person may not contest the TPR petition, present evidence relevant to the disposition of the case, or make alternative dispositional recommendations.

Finally, under current law, a person whose parental rights have been terminated may petition for a rehearing on the grounds that new evidence has been discovered affecting the advisability of the court's adjudication no later than one year after the date on which the TPR judgment was entered, except that a parent who has consented to the TPR or who did not contest the TPR petition may move for relief from

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the judgment no later than 30 days after entry of the TPR judgment. This bill prohibits any person, for any reason, from collaterally attacking a TPR judgment more than one year after its entry.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.03 (7) (bm) of the statutes is amended to read:

2 46.03 (7) (bm) Maintain a file containing records of artificial inseminations
3 under s. 891.40 and records of, declarations of paternal interest under s. 48.025, and
4 of statements acknowledging paternity under s. 69.15 (3) (b). The department shall
5 may release these those records, declarations, and statements only upon an order of
6 the court except that the department may use nonidentifying information
7 concerning artificial inseminations for the purpose of compiling statistics and except
8 that records relating to, declarations of paternal interest shall be released as
9 provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall
10 be released without a court order to the department of workforce development or a
11 county child support agency under s. 59.53 (5) ~~without a court order~~ upon the request
12 of the ~~that~~ department of workforce development or a or county child support agency
13 under s. 59.53 (5) pursuant to the program responsibilities under s. 49.22 or ~~by~~ to any
14 other person with a direct and tangible interest in the ~~record~~ statement.

15 **SECTION 2.** 48.025 (1) of the statutes is amended to read:

16 48.025 (1) Any person claiming to be the father of a nonmarital child who is not
17 adopted or whose parents do not subsequently intermarry under s. 767.60 and whose
18 paternity has not been established may, in accordance with procedures under this
19 section, file with the department a declaration of his interest in matters affecting

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1 such the child. The department may not charge a fee for filing a declaration under
2 this section.

3 **SECTION 3.** 48.025 (2) of the statutes is renumbered 48.025 (2) (a) and amended
4 to read:

5 48.025 (2) (a) The A declaration ~~provided in~~ under sub. (1) may be filed at any
6 time ~~except after~~ before a termination of the father's parental rights under subch.
7 VIII. This paragraph does not apply to a declaration that is filed on or after the
8 effective date of this paragraph [revisor inserts date].

9 (c) The declaration shall be in writing, shall be signed and verified upon oath
10 or affirmation by the person filing the declaration, and shall contain the person's
11 name and address, the name and last-known address of the mother, the month and
12 year of the birth or expected birth of the child, and a statement that ~~he~~ the person
13 filing the declaration has reason to believe that he may be the father of the child. If
14 the person filing the declaration is under 18 years of age, the declaration shall also
15 be signed by a parent or guardian of the person.

16 **SECTION 4.** 48.025 (2) (b) of the statutes is created to read:

17 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the
18 birth of the child or within 14 days after the birth of the child. ~~This~~ This paragraph does
19 not apply to a declaration filed before the effective date of this paragraph [revisor
20 inserts date].

21 **SECTION 5.** 48.025 (2) (d) of the statutes is created to read:

22 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke
23 the declaration at any time by filing with the department a statement, signed and
24 verified upon oath or affirmation, that the person, to the best of his knowledge and
25 belief, is not the father of the child or that another person has been adjudicated as

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the father of the child. If the person filing the revocation is under 18 years of age, the revocation shall also be signed by a parent or guardian of the person.

SECTION 6. 48.025 (3) of the statutes is renumbered 48.025 (3) (b).

SECTION 7. 48.025 (3) (a) of the statutes is created to read:

48.025 (3) (a) The department shall keep confidential and may not open to public inspection or disclose the contents of any declaration, revocation of a declaration, or response to a declaration filed under this section, except as provided under pars. (b) and (c) or by order of the court for good cause shown.

SECTION 8. 48.025 (3) (c) of the statutes is created to read:

48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, ~~767.45~~, ~~769.701~~, or 938.13 or under a substantially similar law of another state or a person authorized to file a petition, ~~bring an action or motion, or commence a proceeding~~ under s. 48.42, ~~767.45~~, ~~769.701~~, or 938.25 or under a substantially similar law of another state may request the department to search its files to determine whether a person who may be the father of the child who is the subject of the proceeding has filed a declaration under this section. If the department has on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a certified copy of the declaration. If the department does not have on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a certified statement that no declaration could be located.

SECTION 9. 48.025 (3) (d) of the statutes is created to read:

48.025 (3) (d) Any person who obtains any information under this subsection may use or disclose that information only for the purposes of a proceeding under s. 48.13, 48.133, 48.14, ~~767.45~~, ~~769.701~~, or 938.13 or under a substantially similar law

The department may require a person who requests a search under this paragraph to pay a reasonable fee that is sufficient to defray the costs to the department of maintaining its file of declarations under this section.

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1 of another state and may not use or disclose that information for any other purpose
2 except by order of the court for good cause shown.

3 **SECTION 10.** 48.025 (5) of the statutes is created to read:

4 48.025 (5) The department shall publicize, in a manner calculated to provide
5 maximum notice to all persons who might claim to be the father of a nonmarital child,
6 all of the following information:

7 (a) That a person claiming to be the father of a nonmarital child may file a
8 declaration of interest under this section.

9 (b) The procedures for filing a declaration of interest.

10 (c) The consequences of filing a declaration of interest.

11 (d) The consequences of not filing a declaration of interest.

12 **SECTION 11.** 48.025 (6) of the statutes is created to read:

13 48.025 (6) (a) Any person who makes a false statement in a declaration,
14 revocation of a declaration, or response to a declaration filed under this section that
15 the person does not believe is true is subject to prosecution for false swearing under
16 s. 946.32 (2).

17 (b) Except as permitted under sub. (3), any person who intentionally obtains,
18 uses, or discloses information that is confidential under this section may be fined
19 \$1,000 or imprisoned for 90 days or both.

20 **SECTION 12.** 48.27 (3) (b) 1. a. of the statutes is amended to read:

21 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under
22 s. 48.025.

23 **SECTION 13.** 48.27 (5) of the statutes is amended to read:

24 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
25 to identify and notify any person who has filed a declaration of paternal interest

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1 under s. 48.025, any person who has acknowledged paternity of the child under s.
2 767.62 (1), and any person who has been adjudged to be the biological father of the
3 child in a judicial proceeding unless the biological father's person's parental rights
4 have been terminated.

5 **SECTION 14.** 48.42 (1) (e) of the statutes is created to read:

6 48.42 (1) (e) In the case of a nonmarital child who is not adopted or whose
7 parents have not subsequently intermarried under s. 767.60 and whose paternity
8 has not been established, a statement that the department has searched its files
9 under s. 48.025 to determine whether a person who may be the father of the child has
10 filed a declaration under that section. The petitioner shall attach to the petition
11 either a certified copy of the declaration or a certified statement of the department,
12 dated no earlier than 15 days after the date of birth of the child, that no declaration
13 could be located.

14 **SECTION 15.** 48.42 (2) (b) 1. of the statutes is amended to read:

15 48.42 (2) (b) 1. A person who has filed ~~a~~ an unrevoked declaration of paternal
16 interest under s. 48.025 before the birth of the child or within 14 days after the birth
17 of the child.

18 **SECTION 16.** 48.42 (2) (b) 2. of the statutes is ~~amended~~ to read: ^{repealed.}

19 ~~48.42 (2) (b) 2. A person or persons alleged to the court to be the father of the~~
20 ~~child or who may, based upon the statements~~ a statement ~~of the mother, signed and~~
21 ~~verified upon oath or affirmation,~~ or other information presented to the court, be the
22 ~~father of the child unless that person has waived the right to notice under s. 48.41~~
23 ~~(2) (c). Any person who makes a false statement under this subdivision that the~~
24 ~~person does not believe is true is subject to prosecution for false swearing under s.~~
25 ~~947.32 (2).~~

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~~at the time the petition is filed or at the time that the child ~~was~~ removed from the home~~

SECTION 17. 48.42 (2) (b) 3. of the statutes is amended to read:

48.42 (2) (b) 3. A person who ^{plain} has lived in a familial relationship ~~at the time that~~

~~the petition is filed~~ is openly living with the child ~~on the child's mother~~ and who may ^{stet-score} be ~~is~~ holding himself out to be the father of the child.

SECTION 18. 48.42 (2) (b) 4. of the statutes is created to read:

48.42 (2) (b) 4. ~~In the case of a child who is less than 6 months of age on the date on which the petition is filed, a person who, during the first 30 days after the birth of the child had a substantial parental relationship, as defined in s. 48.415 (6) (b), with the child.~~ ^(A) ~~has established~~ ^{openly lived with the child and held himself out to be the father of the child} ~~is presumed to have established~~

SECTION 19. ~~48.42 (2) (b) 5. of the statutes is created to read:~~

~~48.42 (2) (b) 5. In the case of a child who is 6 months of age or older on the date on which the petition is filed, a person who, for a period of 6 months within the one-year period immediately preceding the date on which the petition is filed, had a substantial parental relationship, as defined in s. 48.415 (6) (b), with the child.~~

SECTION 20. ~~48.42 (2) (b) 6. of the statutes is created to read:~~

~~48.42 (2) (b) 6. In the case of a child who has been the subject of a proceeding under s. 48.13 or 48.133, a person who has submitted to the jurisdiction of the court and participated in the proceeding.~~

SECTION 21. 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to read:

48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this subsection paragraph, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this subsection paragraph has occurred or if the

or the date on which the child was removed from the home is presumed to have

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1 person who may be the father of the child has been convicted of sexual assault as
 2 specified in this subsection paragraph for conduct which may have led to the child's
 3 conception. A person who under this subsection paragraph is not given notice does
 4 not have standing to appear and contest a petition for the termination of his parental
 5 rights, present evidence relevant to the issue of disposition, or make alternative
 6 dispositional recommendations. This subsection paragraph does not apply to a
 7 person who may be the father of a child conceived as a result of a sexual assault in
 8 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time
 9 of the sexual assault.

10 SECTION 22. 48.42 (2m) (b) of the statutes is created to read:

11 48.42 (2m) (b) *Parent of nonmarital child.* ~~Except as provided in sub. (2) (b),~~
 12 ~~notice is not required to be given to a~~ ^(A) person who may be the father of a nonmarital
 13 child who is not adopted or whose parents do not subsequently intermarry under s.
 14 767.60 and whose paternity has not been established. ~~A~~ ^{entitled to} person who ~~under this~~
 15 ~~paragraph~~ ^{under sub. (2) (b)} is not ~~given~~ ^{entitled to} notice ~~does not have standing to appear and contest a petition~~
 16 for the termination of his parental rights, present evidence relevant to the issue of
 17 disposition, or make alternative dispositional recommendations.

18 SECTION 23. 48.422 (1) of the statutes is amended to read:

19 48.422 (1) The hearing on the petition to terminate parental rights shall be
 20 held within 30 days after the petition is filed. At the hearing on the petition to
 21 terminate parental rights the court shall determine whether any party who is
 22 permitted to contest the petition wishes to contest the petition and inform the parties
 23 of their rights under sub. (4) and s. 48.423.

24 SECTION 24. 48.422 (4) of the statutes is amended to read:

, by virtue of the fact that he has engaged in sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a termination of parental rights proceeding concerning the child may occur, and has the duty to protect his own rights and interests. He is therefore entitled to actual notice of such a

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1 48.422 (4) Any party who is necessary to the proceeding or whose rights may
2 be affected by an order terminating parental rights, other than a party who is not
3 permitted to contest the petition, shall be granted a jury trial upon request if the
4 request is made before the end of the initial hearing on the petition.

5 SECTION 25. 48.423 of the statutes is renumbered 48.423 (1) and amended to
6 read:

7 48.423 (1) RIGHT TO PATERNITY DETERMINATION. If a man who alleges that he is
8 the father of the child person appears at the hearing and wishes to contest the
9 termination of his parental rights claims that he is the father of the child, the court
10 shall set a date for a hearing on the issue of paternity or, if all parties agree, the court
11 may immediately commence hearing testimony concerning the issue of paternity.
12 The court shall inform the man person claiming to be the father of the child of any
13 right to counsel under s. 48.23. The man person claiming to be the father of the child
14 must prove paternity by clear and convincing evidence. A person who establishes his
15 paternity of the child under this subsection may further participate in the
16 termination of parental rights proceeding as provided in sub. (2). (3)

17 SECTION 26. 48.423 (2) of the statutes is created to read.

18 48.423 (2) RIGHT TO PARTICIPATE IN PROCEEDING. In the case of a nonmarital child
19 who is not adopted or whose parents do not subsequently intermarry under s. 767.60
20 and whose paternity has not been established, a person who may be the father of the
21 child may participate in the termination of parental rights proceeding as follows:

22 (a) The person may contest the petition, present evidence relevant to the issue
23 of disposition, and make alternative dispositional recommendations if any of the
24 following applies:

only if the person meets a condition^s specified
in sub. (2) or meets a condition^s specified
in s. 48.42 (2)(b) 1., 3., or 4.

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1 1. The person has filed a timely and unrevoked declaration of paternal interest
2 under s. 48.025 (2) (a) or has filed a timely and unrevoked declaration of paternal
3 interest under s. 48.025 (2) (b) and, within 30 days after filing the declaration,
4 appeared under sub. (1) and claimed that he is the father of the child, commenced
5 an action under s. 767.45 or under a substantially similar law of another state to
6 determine the paternity of the child, or filed a statement acknowledging paternity
7 under s. 767.62 (1) or under a substantially similar law of another state.

8 2. The person meets a condition specified in s. 48.42 (2) (b) 4., 5., or 6.

9 (b) The person may not contest the petition, but may present evidence relevant
10 to the issue of disposition and make alternative dispositional recommendations, if
11 any of the conditions specified in s. 48.42 (2) (b) 1., 2., or 3. applies.

12 (c) The person may not contest the petition, present evidence relevant to the
13 issue of disposition, or make alternative dispositional recommendations if notice is
14 not required to be given to the person under s. 48.42 (2m) (a) or (b).
15

16 **SECTION 27.** 48.43 (6) of the statutes is amended to read:

17 48.43 (6) Judgments under this subchapter terminating parental rights are
18 final and, are appealable under s. 808.03 (1) according to the procedure specified in
19 s. 809.107, and are subject to a petition for rehearing or a motion for relief only as
20 provided in s. 48.46 (1m) and (2). In no event may any person, for any reason,
21 collaterally attack a judgment terminating parental rights more than one year after
22 the date on which the judgment was entered.

23 **SECTION 28.** 48.837 (4) (e) of the statutes is amended to read:

24 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3),
25 ascertain whether the child's paternity of a nonmarital child who is not adopted or
whose parents do not subsequently intermarry under s. 767.60 has been

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1 acknowledged under s. 767.62 (1) or a substantially similar law of another state or
2 adjudicated in this state or another jurisdiction. ~~If any person has filed a declaration~~
3 ~~of paternal interest under s. 48.025, the court shall determine the rights of that~~
4 ~~person. If the child's paternity has not been acknowledged or adjudicated and if no~~
5 ~~person has filed a declaration under s. 48.025, the court shall attempt to ascertain~~
6 ~~the paternity of the child and shall determine the rights of any person who may be~~
7 ~~the father of the child as provided under s. 48.423 (2).~~ (13) (1) ✓ The court may not proceed with
8 the hearing on the petitions under this section unless the parental rights of the
9 nonpetitioning parent, whether known or unknown, have been terminated.

10 SECTION 29. 48.91 (2) of the statutes is amended to read:

11 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted
12 or whose parents do not subsequently intermarry under s. 767.60, the court shall
13 establish ~~whether the rights of any persons who have filed declarations of paternal~~
14 ~~interest under s. 48.025 have been determined or whether the child's paternity has~~
15 ~~been acknowledged under s. 767.62 (1) or a substantially similar law of another state~~
16 ~~or adjudicated in this state or in another jurisdiction. If the court finds that no such~~
17 ~~determination has been made~~ child's paternity has not been acknowledged or
18 adjudicated, the court shall ~~proceed, prior to any action on the petition for adoption,~~
19 ~~to attempt to ascertain the paternity of the child and the rights of any person who~~
20 ~~has filed a declaration under s. 48.025 shall determine the rights of any person who~~
21 ~~may be the father of the child as provided under s. 48.423 (2).~~ (13) (1) ✓ The court may not
22 proceed with the hearing on the petition for adoption unless the parental rights of
23 the nonpetitioning parent, whether known or unknown, have been terminated.

24 SECTION 30. 938.27 (3) (b) 1. a. of the statutes is amended to read:

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1 938.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest
2 under s. 48.025.

3 **SECTION 31.** 938.27 (5) of the statutes is amended to read:

4 938.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
5 to identify and notify any person who has filed a declaration of paternal interest
6 under s. 48.025, any person who has acknowledged paternity of the child under s.
7 767.62 (1), and any person who has been adjudged to be the biological father of the
8 juvenile in a judicial proceeding unless the ~~biological father's~~ person's parental
9 rights have been terminated. 48.422 (6)(a),

10 **SECTION 32. Initial applicability.**

11 (1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS
12 PROCEEDINGS. The treatment of sections 48.42 (2) (b) 1., 2., 3., 4., ~~5 and 6~~ and ~~48.422~~
13 ~~(1) and (4)~~, 48.837 (4) (e), and 48.91 (2) ~~of the statutes~~, the renumbering and
14 amendment of sections 48.42 (2m) and 48.423 of the statutes, and the creation of
15 sections 48.42 (2m) (b) and 48.423 (2) ~~of the statutes~~ first apply to a termination of
16 parental rights petition filed on the effective date of this subsection.

17 **SECTION 33. Effective date.**

18 (1) This act takes effect on the first day of the 3rd month beginning after
19 publication.

20 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0112/2ins
GMM.....

(INSERT 11-4) ✓

SECTION 1. 48.422 (6) (a) of the statutes is amended to read:

48.422 (6) (a) ~~If the child is~~ In the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established, the petitioner, prior to the hearing, shall file with the court a certified copy of any declaration of paternal interest filed under s. 48.025 with respect to the child or a certified statement of the department, dated no earlier than 15 days after the date of birth of the child, that the department has searched its files under s. 48.025 and no declaration with respect to the child could be located. At the hearing, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 447 ss. 10, 67; 1985 a. 176; 1997 a. 104.

(END OF INSERT)

(INSERT 12-14) ✓

SECTION 2. 48.423 (2) of the statutes is created to read:

48.423 (2) **RIGHTS OF OUT-OF-STATE FATHERS.** A person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 ✓ and whose paternity has not been established may contest the petition, present evidence relevant to the issue of disposition, and make alternative dispositional recommendations if the person appears at the hearing, establishes paternity under sub. (1), and proves all of the following by a preponderance of the evidence:

(a) That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.

(b) That the mother left that state without notifying or informing that person that she could be located in this state.

(c) That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.

(d) That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

(END OF INSERT)

(INSERT A) ✓

of
In addition, the bill creates a presumption, in the case of a child who is six months ~~or~~ age or older, that a person has established a substantial parental relationship with the child if the person has openly lived with the child and held himself out to be the father of the child for a period of six months within the one-year period immediately preceding the date on which the petition is filed or the date on which the child was removed from the home.

The bill also specifies that a person who may be the father of a nonmarital child whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, has the duty to protect his own rights and interests, and, therefore, is entitled to actual notice of the TPR proceeding only as provided in the bill. In addition, the bill specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations unless the person appears at the hearing, establishes paternity, and proves all of the following:

1. That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.

2. That the mother left that state without notifying or informing that person that she could be located in this state.

3. That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.

4. That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

(END OF INSERT)

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0112/2dn

GMM.....

Kmg

Representatives Jeskewitz and Plale:

This redraft makes all of the changes that were agreed to by the committee at the October 10, 2002, meeting. The redraft:

1. Specifies that a person who may be the father of a nonmarital child whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding may occur, has the duty to protect his own rights and interests, and, therefore, is entitled to notice of the proceeding only as provided in the bill.
2. Provides that an out-of-state father may participate in a TPR proceeding if he appears at the hearing, establishes paternity, and proves that he resides and has resided in another state, the mother left that state without notifying him that she could be located in this state, the father attempted to locate the mother, but did not know or have reason to know that the mother was in this state, and he has complied with the requirements of that other state to protect his interests in the child.
3. Permits DHFS to charge a reasonable fee for searching the registry that is sufficient to defray the costs of maintaining the registry.
4. Eliminates access to the registry for purposes of paternity proceedings, but permits access to the registry by a person who is authorized to file a petition commencing an adoption proceeding.
5. Eliminates notice of a TPR proceeding to a man who is merely alleged to be the father of the child or who, based on statements of the mother, may be the father of the child, but who has not filed a declaration of paternal interest, lived with the child, or otherwise established a substantial parental relationship with the child.
6. Eliminates notice of a TPR proceeding to a father who has submitted to the juvenile court's jurisdiction in a CHIPS proceeding, but who has not filed a declaration of paternal interest, lived with the child, or otherwise established a substantial parental relationship with the child.
7. Eliminates the three-tier system for determining the extent to which an alleged father may participate in a TPR proceeding and instead provides for a simple two-tier system under which a father who is entitled to notice is entitled to full participation and a father who is not entitled to notice is not entitled to any participation.

8. Eliminates the distinction between children under six months of age and over six months of age for purposes of providing notice to a person who has established a substantial parental relationship with the child and instead simply requires notice to any person who has established such a relationship. The bill also creates a presumption that a man who has lived with the child and held himself out to be the father of the child for six months out of one year is presumed to have established a substantial parental relationship with the child.

9. Eliminates a requirement that the results of the registry search be attached to the TPR petition and instead requires the petitioner to file those results with the court prior to the plea hearing.

If you have any questions about the redraft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0112/2dn
GMM:kmg:jf

December 9, 2002

Representatives Jeskewitz and Plale:

This redraft makes all of the changes that were agreed to by the committee at the October 10, 2002, meeting. The redraft:

1. Specifies that a person who may be the father of a nonmarital child whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding may occur, has the duty to protect his own rights and interests, and, therefore, is entitled to notice of the proceeding only as provided in the bill.
2. Provides that an out-of-state father may participate in a TPR proceeding if he appears at the hearing, establishes paternity, and proves that he resides and has resided in another state, the mother left that state without notifying him that she could be located in this state, the father attempted to locate the mother, but did not know or have reason to know that the mother was in this state, and he has complied with the requirements of that other state to protect his interests in the child.
3. Permits DHFS to charge a reasonable fee for searching the registry that is sufficient to defray the costs of maintaining the registry.
4. Eliminates access to the registry for purposes of paternity proceedings, but permits access to the registry by a person who is authorized to file a petition commencing an adoption proceeding.
5. Eliminates notice of a TPR proceeding to a man who is merely alleged to be the father of the child or who, based on statements of the mother, may be the father of the child, but who has not filed a declaration of paternal interest, lived with the child, or otherwise established a substantial parental relationship with the child.
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8. Eliminates the distinction between children under six months of age and over six months of age for purposes of providing notice to a person who has established a substantial parental relationship with the child and instead simply requires notice to any person who has established such a relationship. The bill also creates a presumption that a man who has lived with the child and held himself out to be the father of the child for six months out of one year is presumed to have established a substantial parental relationship with the child.

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If you have any questions about the redraft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
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Emery, Lynn

From: Bilot, Erin
Sent: Monday, August 04, 2003 10:27 AM
To: LRB.Legal
Subject: Draft review: LRB-0112/2 Topic: Birth parent registry

It has been requested by <Bilot, Erin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0112/2 Topic: Birth parent registry